

11 USC § 507(a)(4)
workers comp insurance

Employers Insurance of Wausau v. Plaid Pantries, Inc.

In re Plaid Pantries

Case No. 389-31028-S11

11/1/93

Published at 10 F.3d 605

9th Cir. aff'g J Frye

The Court of Appeals ruled that unpaid workers' compensation insurance premiums are a contribution to an employee benefit plan and therefore entitled to priority under 11 USC §507(a)(4).

P91-27A(12)

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 92-35058
CT/AG#: CV-91-1158-ER

CLERK, U.S.
DISTRICT
COURT
PORTLAND

EMPLOYERS INSURANCE OF WAUSAU

Creditor - Appellee

PLAID PANTRIES, INC.

Debtor - Appellant

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

MAR X 7 1994 *lod 6/13/94*

TERENCE H. DUNN, CLERK

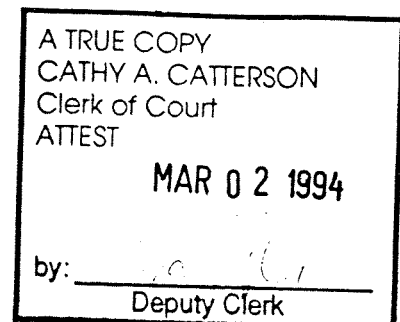
BY WA DEPUTY

APPEAL FROM the United States District Court for the
District of Oregon (Portland) .

THIS CAUSE came on to be heard on the Transcript of the
Record from the United States District Court for the
District of Oregon (Portland)
and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and
adjudged by this Court, that the judgment of the said
District Court in this cause be, and hereby is AFFIRMED.

Filed and entered ___Nov 1, 1993__



Certified to be a true and correct
copy of original filed in my office.
Dated 6-10-94
Donald M. Cinnamond, Clerk
By 2.86 Deputy

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FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EMPLOYERS INSURANCE OF WAUSAU,
Creditor-Appellee,

v.

PLAID PANTRIES, INC.,
Debtor-Appellant.

No. 92-35058

D.C. No.
CV 91-1158-FR

OPINION

Appeal from the United States District Court
for the District of Oregon
Helen J. Frye, District Judge, Presiding

Argued and Submitted
May 5, 1993—Portland, Oregon

Filed November 1, 1993

Before: Harry Pregerson and Andrew J. Kleinfeld, Circuit
Judges; Charles A. Legge, District Judge.*

Opinion by Judge Legge

SUMMARY

Bankruptcy/Priorities/Labor and Employment

The court of appeals affirmed a district court judgment. The court held that unpaid workers' compensation premiums are entitled to priority payment from a bankruptcy estate.

*Hon. Charles A. Legge, United States District Judge for the Northern District of California, sitting by designation.

appellee Employers Insurance of Wausau provided benefits to the employees of appellant Plaid Pantries, Inc. under a workers' compensation insurance plan. Plaid paid the premi-

id filed for bankruptcy, and did not pay pre-petition premiums it owed Wausau for the coverage. Wausau filed a priority claim for a portion of the premiums. The bankruptcy court found that the premiums were not contributions to an employee benefit plan," and therefore were not entitled to priority under a Bankruptcy Code statute, Section 507(a)(4), grants contributions to an "employee benefit plan" a priority preference. The district court reversed, holding that the premiums for the workers compensation coverage were entitled to priority payment. Plaid appealed.

Workers' compensation insurance is an "employee benefit plan" under Section 507(a)(4). [2] Benefits under the workers' compensation system are a form of compensation paid to workers in exchange for their labor. [3] The legislative history and public policy behind Section 507(a)(4) confirm that the premiums owed to an insurer under a workers' compensation plan should be entitled to the same protection as other benefit plans provided to employees. Accordingly, premiums are accorded the same level of priority under Section 507(a)(4).

COUNSEL

Simson and Richard H. Allan, Ball, Janik & Novack, Portland, Oregon, for the debtor-appellant.

Sokol and James T. Yand, Stafford Frey Cooper & Smith, Portland, Oregon, for the creditor-appellee.

OPINION

LEEGE, District Judge:

Debtor-appellant Plaid Pantries, Inc. ("Plaid") appeals from the district court's decision that creditor-appellee Employers Insurance of Wausau's ("Wausau") claim for unpaid workers' compensation insurance premiums was entitled to priority payment from Plaid's bankruptcy estate. We have jurisdiction under 28 U.S.C. § 158(d), and review the conclusions of the district and bankruptcy courts on this issue of law *de novo*. *In re Daniels-Head & Assoc.*, 819 F.2d 914, 918 (9th Cir. 1987). There are no material facts in dispute.

I.

This case presents a narrow but significant legal issue: Are unpaid workers' compensation premiums entitled to priority payment from a bankruptcy estate under 11 U.S.C. § 507(a)(4)? Section 507(a)(4) grants contributions to an "employee benefit plan" a fourth level of priority preference. Section 507 states that, "The following expenses and claims have priority in the following order: . . . Fourth, allowed unsecured claims for contributions to an employee benefit plan"

The term "employee benefit plan" is not defined by that statute.

II.

The material facts are not in dispute. Wausau provided health, life and disability benefits to the employees of Plaid under a workers' compensation insurance plan. The premiums were paid by Plaid. Plaid filed for bankruptcy, and it did not pay \$325,888 of pre-petition premiums owed to Wausau for that coverage. Wausau filed a priority claim for \$59,029, which represents that portion of the \$325,888 which was

incurred within 180 days of the bankruptcy filing; see 11 U.S.C. § 507(a)(4)(A).

The bankruptcy court held that the workers' compensation premiums were not contributions to an "employee benefit plan", and consequently that Wausau was not entitled to priority payment. The district court reversed the bankruptcy court's conclusion. It held that as a matter of both public policy and statutory construction, the term "employee benefit plan" should have the same meaning under Section 507(a)(4) as it has under the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.* The district court determined that under ERISA, workers' compensation is an employee benefit plan, and that the premiums for that coverage are therefore entitled to priority payment under the Bankruptcy Code.

III.

[1] We affirm the district court's judgment, but for the reasons stated below. We conclude that workers' compensation insurance is an "employee benefit plan" under Section 507(a)(4). We therefore need not reach the question of whether Congress intended to incorporate the definition of "employee benefit plan" in ERISA into the Bankruptcy Code.

Under the Bankruptcy Act of 1898, only actual "wages and commissions" had priority. Title 11, United States Code, Section 104a (repealed 1978). *United States v. Embassy Restaurant, Inc.*, 359 U.S. 29 (1959); *Joint Industry Board v. United States*, 391 U.S. 224 (1968). The United States Supreme Court held in those cases that payments owed by an employer to a union workers' welfare trust fund were not entitled to priority as "wages" or "commissions" under Section 507(a)(3). The Court rejected the argument that payments to a trust fund were a form of compensation made in exchange for lower wages.

In 1978, Section 507(a)(4) was added to the Bankruptcy Code in order to overrule those two cases and to provide level of priority for "fringe benefits." *In re Saco Local Corp.*, 711 F.2d 441, 448 (1st Cir. 1983). The statute expanded the priorities to include contributions to "employee benefit plans," forms of contribution not contemplated in 1898 Act. It "recognize[d] the realities of labor contract negotiations, under which wage demands are often reduced if adequate fringe benefits are substituted." H.R. Rep. No. 595, Cong., 2d Sess. 357 (1977) reprinted in 1978 U.S. Code Cong. & Admin. News 5963, 6313; S.Rep. No. 989, Cong. 2d Sess. 69 (1978) reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5855.

[2] The workers' compensation system is designed to provide benefits to victims of work related injuries. Those benefits are generally funded by insurance, the premiums for insurance are paid by the employers, and the costs are paid on in the form of lower wages and higher prices. Those benefits are a form of compensation offered to workers in exchange for the labor that they perform. While the insurance is often statutorily — as opposed to contractually — mandated, the workers' compensation system is nonetheless a plan of compensation available to workers, and the employer's payment of insurance premiums fund it. Indeed, it does not argue that statutorily required premiums are "contributions" under Section 507(a)(4).

Plaid argues that in order to be entitled to a priority the benefits must be "wage substitutes;" that is, a substitute for the wages given priority under subsection (3). But we do so interpret the intent of Congress. By amending Section in 1978 and adding new subsection (4) Congress expanded and not merely substituted, the priorities.

The purpose of Section 507(a)(4) is to protect workers' benefit plans. As stated by the First Circuit, allowing an insurer to obtain its premiums through the priority would

seem the surest way to provide the employees with the policy benefits to which they are entitled." *In re Saco Local Dev. Corp.*, 711 F.2d at 449.

We agree. We see no reason for concluding that Congress intended to deny priority to workers' compensation benefit plans while granting the same statutory priority to other plans providing benefits to employees. Nor can we conclude that Congress intended to distinguish between benefit plans that are contractually promised to employees and those that are statutorily required. The purpose of the priority, to protect the solvency of benefit plans, is present in both situations.

IV.

[3] The legislative history and the public policy behind Section 507(a)(4) both compel that the premiums owed to an insurer under a workers' compensation plan should be entitled to the same protection as other benefit plans provided to employees. Accordingly, the premiums for that coverage are accorded the same level of priority under by Section 507(a)(4).

The judgment of the district court is AFFIRMED.

11 USC § 507(a)(4)
workers comp insurance

In re Plaid Pantries

Civ. No. 91-1158-FR
Case No. 389-31028-S11

*published
137 BR 405*

12/6/91 Judge Frye reversed Judge Sullivan's oral ruling

The district court decided that workers' compensation insurance premiums are a contribution to an employee benefit plan and therefore entitled to priority under 11 USC §507(a)(4).

Judge Frye adopted the broad ERISA definition of an employee benefit plan found in 29 USC § 1002(1), which includes a plan providing "medical, surgical or hospital care or benefits or benefits in the event of sickness, accident, disability, death or unemployment." Judge Frye did not explain why she did not also adopt 29 USC § 1003(b)(3), which excludes plans from the provisions of ERISA that are maintained solely for the purpose of complying with applicable workmen's compensation laws (which was the basis for Judge Sullivan denying the priority).

P91-27(6)

FILED

DEC 6 8 11 PM '91

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USDC
12/11/91

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:

PLAID PANTRIES, INC., an
Oregon corporation [successor
by merger to Apollo Distribut-
ing Co.; J L & R Merchandising,
Inc.; and Plaid Industries,
Inc., all Oregon corporations],
Debtor.

Bankruptcy Case No.
389-31028-S11

Civil No. 91-1158-FR

O P I N I O N

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PAGE 1 - OPINION

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1 FRYE, Judge:

2 The matter before the court is the appeal of Employers
3 Insurance of Wausau (Wausau) from a final order of the United
4 States Bankruptcy Court for the District of Oregon.

5 BACKGROUND

6 Wausau is an insurance company which provided workers'
7 compensation coverage to the debtor, Plaid Pantries, Inc.
8 (Plaid Pantries). Plaid Pantries failed to pay \$59,029.00 in
9 premiums to Wausau for the 180 days prior to filing a petition
10 in bankruptcy on March 19, 1989. Wausau sought priority for
11 these unpaid premiums contending they were contributions to an
12 employee benefit plan under 11 U.S.C. § 507(a)(4). On June
13 28, 1991, the United States Bankruptcy Court for the District
14 of Oregon entered a final order denying Wausau's claim for
15 priority.

16 The bankruptcy code provides a priority for "unsecured
17 claims for contributions to an employee benefit plan arising
18 from services rendered within 180 days before the date of the
19 filing of the petition." 11 U.S.C. § 507(a)(4). The sole
20 issue on appeal is whether the workers' compensation insurance
21 premiums paid by Plaid Pantries for its employees amount to
22 "contributions to an employee benefit plan" within the meaning
23 of 11 U.S.C. § 507(a)(4). If so, then the bankruptcy court
24 erred in denying Wausau's claim for priority.

25 APPLICABLE STANDARD

26 The district court acts as an appellate court with regard

1 to decisions of the bankruptcy court. The district court
2 reviews the bankruptcy court's findings of fact under the
3 clearly erroneous standard; conclusions of law are reviewed
4 de novo. Daniels-Head & Assocs. v. William M. Mercer, Inc.
5 (In re Daniels-Head & Assocs.), 819 F.2d 914, 918 (9th Cir.
6 1987).

7 ANALYSIS AND RULING

8 Section 507(a) of the bankruptcy code sets forth priori-
9 ties for a number of expenses and claims, including the prior-
10 ity claimed here:

11 (4) Fourth, allowed unsecured claims for con-
12 tributions to an employee benefit plan --

13 (A) arising from services rendered within
14 180 days before the date of the filing of the
15 petition or the date of the cessation of the
16 debtor's business, whichever occurs first; but
17 only

18 (B) for each such plan, to the extent
19 of --

20 (i) the number of employees covered
21 by each such plan multiplied by \$2,000;
22 less

23 (ii) the aggregate amount paid to
24 such employees under paragraph (3) of this
25 subsection, plus the aggregate amount paid
26 by the estate on behalf of such employees
to any other employee benefit plan.

11 U.S.C. § 507(a)(4) (emphasis added). Congress failed to
define the term "employee benefit plan" in the bankruptcy
code. The term, however, is defined in the Employee Retirement
Income Security Act of 1974 (ERISA). Under the defini-
tion set forth in ERISA, an "employee benefit plan" includes:

1 any plan, fund, or program which was heretofore
2 or is hereafter established or maintained by an
3 employer or by an employee organization, or by
4 both, to the extent that such plan, fund, or pro-
5 gram was established or is maintained for the pur-
6 pose of providing for its participants or their
7 beneficiaries, through the purchase of insurance
8 or otherwise, (A) medical, surgical, or hospital
9 care or benefits, or benefits in the event of sick-
10 ness, accident, disability, death or unemployment,
11 or vacation benefits, apprenticeship or other
12 training programs, or day care centers, scholar-
13 ship funds, or prepaid legal services, or (B) any
14 benefit described in section 186(c) of this title
15 (other than pensions on retirement or death, and
16 insurance to provide such pensions).

17 29 U.S.C. § 1002(1); see also 29 U.S.C. § 1002(3). At least
18 two courts which have considered this issue have found the
19 ERISA definition applicable to 11 U.S.C. § 507(a)(4).
20 Perlstein v. Rockwood Ins. Co. (In re AOV Indus.), 85 B.R.
21 183, 186 (Bankr. D.D.C. 1988) ("We consider the term 'employee
22 benefit plan' in 11 U.S.C. § 507(a)(4) to be consistent with
23 the same term as defined . . . by ERISA."); In re Saco Local
24 Dev. Corp., 23 B.R. 644 (Bankr. D. Me. 1982), aff'd, 711 F.2d
25 441 (1st Cir. 1983).

26 Plaid Pantries contends that the ERISA definition of an
"employee benefit plan" is not applicable to the bankruptcy
code. This contention is not persuasive, however. For exam-
ple, Plaid Pantries makes no suggestion to the court how the
term might otherwise be defined. Moreover, even the lone case
cited by Plaid Pantries which rejected the ERISA definition of
an "employee benefit plan" acknowledged that there were "com-
pelling policy reasons for finding that Congress intended the
ERISA definition to apply to section 507 of the Bankruptcy

1 Code." Official Labor Creditors Comm. v. Jet Florida Sys.,
2 Inc. (In re Jet Florida Sys., Inc.), 80 B.R. 544, 547 (S.D.
3 Fla. 1987).

4 This court agrees with those courts which have found
5 that Congress intended the term "employee benefit plan" in
6 11 U.S.C. § 507(a) to be defined as it is in ERISA. Since
7 Congress did not define the term in the bankruptcy code, it
8 is only logical to look to another statute where the term is
9 defined. Cf. Morissette v. United States, 342 U.S. 246, 263
10 (1952) ("[W]here Congress borrows terms of art in which are
11 accumulated the legal tradition and meaning of centuries
12 of practice, it presumably knows and adopts the cluster of
13 ideas that were attached to each borrowed word in the body
14 of learning from which it was taken and the meaning its use
15 will convey to the judicial mind unless otherwise instruc-
16 ted.").

17 Having found that the term "employee benefit plan" in
18 11 U.S.C. § 507(a) is to be defined as it is in ERISA, the
19 court concludes that the workers' compensation insurance
20 coverage provided by Plaid Pantries is a plan providing
21 "medical, surgical, or hospital care or benefits, or bene-
22 fits in the event of sickness, accident, disability, death
23 or unemployment." 29 U.S.C. § 1002(1). Accordingly, the
24 court finds that the claim of Wausau for priority under 11
25 U.S.C. § 507(a)(4) should have been granted.


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CONCLUSION

The decision of the United States Bankruptcy Court for
the District of Oregon is reversed.

DATED this 6 day of December, 1991.


HELEN J. FRYE
United States District Judge